

1 HOUSE BILL NO. 175

2 INTRODUCED BY S. KERNS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE CONSUMER PROTECTION ACT;
5 PROHIBITING RESTRAINTS ON THE REPAIR OF CONSUMER GOODS; REQUIRING THE PROVISION OF
6 ARTICLES NEEDED FOR REPAIR OF COMMERCIAL GOODS; PROVIDING DEFINITIONS; PROHIBITING
7 THE CREATION OF MONOPOLIES FOR REPAIR; AND AMENDING SECTIONS 30-14-102, 30-14-202, AND
8 30-14-205, MCA."

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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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12 NEW SECTION. **Section 1. Restraints on repair.** (1) It is an unfair practice to restrain the ability of a
13 consumer, personally or through an independent repair provider, to repair the consumer's goods.

14 (2) (a) A contract or warranty for goods sold in the state may not limit the ability of the consumer,
15 personally or through an independent repair provider, to repair the goods.

16 (b) A warranty for goods sold in the state may not include any provision that voids the warranty if the
17 consumer or an independent repair provider repairs the goods.

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19 NEW SECTION. **Section 2. Provision of articles needed for repair.** (1) Except as provided in
20 subsections (2) and (3), a manufacturer of goods sold in the state shall make available to a consumer or an
21 independent repair provider on fair and reasonable terms any articles needed for repair of the goods, including
22 but not limited to:

23 (a) documentation, including but not limited to diagrams, manuals, schematics, service code
24 descriptions, or any other guidance or information used in effecting the services of diagnostic testing,
25 maintenance, refurbishment, or replacement of parts;

26 (b) parts; and

27 (c) tools, including but not limited to physical tools and any software program, hardware implement, or
28 other apparatus used for diagnostic testing and repair of electronic or computer parts.

- 1 (2) This section does not apply to goods that:
- 2 (a) are made of only one part;
- 3 (b) cannot be used safely after repair; or
- 4 (c) cannot be repaired due to their essential nature.
- 5 (3) Nothing in this section may be construed to require a manufacturer to divulge a trade secret
- 6 except as necessary to provide documentation, parts, or tools on fair and reasonable terms.
- 7 (4) Failure to comply with this section is an unfair practice.

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9 **Section 3.** Section 30-14-102, MCA, is amended to read:

10 **"30-14-102. Definitions.** As used in this part, the following definitions apply:

11 (1) "Consumer" means a person who purchases or leases goods, services, real property, or

12 information primarily for personal, family, or household purposes.

13 (2) "Department" means the department of justice created in 2-15-2001.

14 (3) "Documentary material" means the original or a copy of any book, record, report, memorandum,

15 paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible

16 document or recording.

17 (4) "Examination" of documentary material includes the inspection, study, or copying of documentary

18 material and the taking of testimony under oath or acknowledgment in respect to any documentary material or

19 copy of documentary material.

20 (5) "Fair and reasonable terms" means costs and terms that are equivalent to the most favorable

21 costs and terms under which an original equipment manufacturer offers the part, tool, or documentation to an

22 authorized repair provider, less any discounts, rebates, or other incentive programs.

23 ~~(5)~~(6) (a) "Gift certificate" means a record, including a gift card or stored value card, that is provided

24 for paid consideration and that indicates a promise by the issuer or seller of the record that goods or services

25 will be provided to the possessor of the record for the value that is shown on the record or contained within the

26 record by means of a microprocessor chip, magnetic stripe, bar code, or other electronic information storage

27 device. The consideration provided for the gift certificate must be made in advance. The value of the gift

28 certificate is reduced by the amount spent with each use. A gift certificate is considered trust property of the

1 possessor if the issuer or seller of the gift certificate declares bankruptcy after issuing or selling the gift
 2 certificate. The value represented by the gift certificate belongs to the possessor, to the extent provided by law,
 3 and not to the issuer or seller.

4 (b) The term does not include:

5 (i) prepaid telecommunications and technology cards, including but not limited to prepaid telephone
 6 calling cards, prepaid technical support cards, and prepaid internet disks that have been distributed to or
 7 purchased by a consumer;

8 (ii) a coupon provided to a consumer pursuant to any award, loyalty, or promotion program without any
 9 money or consideration being given in exchange for the card; or

10 (iii) a gift certificate usable with multiple sellers of goods or services.

11 (7) "Independent repair provider" means an individual or business engaged in the repair of goods and
 12 operating in the state without an arrangement with a manufacturer of goods that would make the individual or
 13 business an authorized repair provider of those goods.

14 ~~(6)~~(8) "Person" means natural persons, corporations, trusts, partnerships, incorporated or
 15 unincorporated associations, and any other legal entity.

16 ~~(7)~~(9) "Possessor" means a natural person who has physical control over a gift certificate.

17 (10) "Repair" means diagnostic testing of electronic or computer components, installation of software
 18 patches or updates, maintenance, modification, refurbishment, or replacement of parts.

19 ~~(8)~~(11) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any
 20 services, any property, tangible or intangible, real, personal, or mixed, or any other article, commodity, or thing
 21 of value, wherever located, and includes any trade or commerce directly or indirectly affecting the people of this
 22 state."

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24 **Section 4.** Section 30-14-202, MCA, is amended to read:

25 **"30-14-202. Definitions.** As used in this part, unless the context indicates otherwise, the following
 26 definitions apply:

27 (1) (a) "Article of commerce" includes but is not limited to any commodity, product, service or output
 28 of a service trade, or any product of the soil.

1 (b) The term does not include a product or service of a public utility.

2 (2) "Business" includes any person, domestic or foreign, engaged in the production, manufacture,
3 distribution, purchasing, or sale of any article of commerce within the state of Montana.

4 (3) (a) "Cost", as applied to production, includes the cost of raw materials, labor, and all overhead
5 expenses of the producer.

6 (b) Cost, as applied to distribution, means either the invoice price of the article or product sold or the
7 cost to the dealer or vendor for replacing the article or product in the quantity last purchased within 90 days
8 prior to the sale of the article or product, whichever is less, minus all trade discounts except customary cash
9 discounts plus the cost of doing business by the vendor.

10 (4) "Cost of doing business" or "overhead expense" includes all costs of doing business incurred in
11 the conduct of a business and includes but is not limited to the following items of expense:

12 (a) labor (including salaries of executives and officers);

13 (b) rent;

14 (c) interest on borrowed capital;

15 (d) depreciation;

16 (e) selling cost;

17 (f) maintenance of equipment;

18 (g) delivery costs;

19 (h) credit losses;

20 (i) all types of licenses;

21 (j) taxes;

22 (k) insurance and advertising.

23 (5) "Customary cash discount" means any allowance not exceeding 2%, whether a part of a larger
24 discount or not, made to a wholesale or retail vendor when the vendor pays for merchandise within a limited or
25 specified time.

26 (6) "Department" means the department of justice provided for in 2-15-2001.

27 (7) "Person" includes any person, partnership, firm, corporation, joint-stock company, or other
28 association engaged in business within this state.

1 (8) "Repair" means diagnostic testing of electronic or computer components, installation of software
 2 patches or updates, maintenance, modification, refurbishment, or replacement of parts.

3 ~~(8)~~(9) "Vendor" includes not only any person acting as one known generally and legally as a vendor
 4 but also any person who performs work upon, renovates, alters, or improves any personal property belonging to
 5 another person."

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7 **Section 5.** Section 30-14-205, MCA, is amended to read:

8 **"30-14-205. Unlawful restraint of trade.** It is unlawful for a person or group of persons, directly or
 9 indirectly:

10 (1) to enter an agreement for the purpose of fixing the price or regulating the production of an article
 11 of commerce;

12 (2) for the purpose of creating or carrying out any restriction in trade, to:

13 (a) limit productions;

14 (b) increase or reduce the price of merchandise or commodities;

15 (c) prevent competition in the distribution or sale of merchandise or commodities;

16 (d) fix a standard or figure whereby the price of an article of commerce intended for sale, use, or
 17 consumption will be in any way controlled;

18 (e) agree to add to a bid for any contract an amount, fixed by percentage or otherwise, for the
 19 purpose of making a refund or sharing costs of bidding with any other bidder;

20 (f) return a part of any amount added to a bid by collusive agreement among bidders to any person;

21 (g) create a monopoly in the manufacture, sale, repair, or transportation of an article of commerce;

22 (h) enter into an agreement which binds any person not to manufacture, sell, or transport an article of
 23 commerce below a common standard or figure or which keeps such article or transportation at a fixed or
 24 graduated figure or by which the price of such article is settled so as to preclude unrestricted competition."

25

26 NEW SECTION. **Section 6. Codification instruction.** [Sections 1 and 2] are intended to be codified
 27 as an integral part of Title 30, chapter 14, part 1, and the provisions of Title 30, chapter 14, part 1, apply to
 28 [sections 1 and 2].

